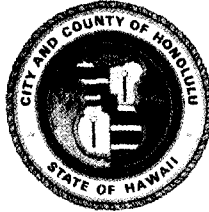


OFFICE OF THE MAYOR
CITY AND COUNTY OF HONOLULU

530 SOUTH KING STREET, ROOM 300 • HONOLULU, HAWAII 96813
PHONE: (808) 523-4141 • FAX: (808) 527-5552

JEREMY HARRIS
MAYOR



October 28, 1997

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OCT 30 1997

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Mr. William F. Caton
Acting Secretary
Federal Communications Commission
Washington, D.C. 20554

Dear Mr. Caton:

The City and County of Honolulu is opposed to the Notice of Proposed Rule Making, MM Docket No. 97-182 regarding Digital Television, which would preempt state and local zoning and land use restrictions on the siting, placement and construction of broadcast station transmission facilities.

We are very concerned about the seeming trend of the Federal Communications Commission to continue to infringe on local government's responsibility for zoning matters. The proposed rule making continues this trend.

We are opposed not only on jurisdictional grounds, but also on the grounds of public safety, the importance of citizen participation in major land use decision-making, and the impacts of locally-unregulated antennas on our tourism industry.

Enclosed are more detailed comments from Honolulu's chief planning officer and the director of land utilization. I hope you will seriously consider our concerns, and decide NOT to adopt the proposed new rules on this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Jeremy Harris", is written over the word "Sincerely," and the printed name "JEREMY HARRIS".

JEREMY HARRIS
Mayor

JH:fm
Encl.

cc: Senator Dan Inouye
Senator Neil Abercrombie
Representative Daniel Akaka
Representative Patsy Mink
Governor Ben Cayetano
Mayors of Neighbor Island Counties

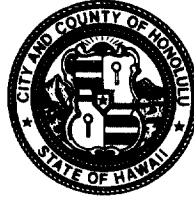
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PLANNING DEPARTMENT
CITY AND COUNTY OF HONOLULU

650 SOUTH KING STREET, 8TH FLOOR • HONOLULU, HAWAII 96813-3017
PHONE: (808) 523-4711 • FAX: (808) 523-4950

JEREMY HARRIS
MAYOR



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CHIEF PLANNING OFFICER

DONA L. HANAIKE
DEPUTY CHIEF PLANNING OFFICER

(CW)

October 28, 1997

Mr. William F. Caton
Acting Secretary
Federal Communications Commission
Washington, D.C. 20554

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OCT 30 1997

Dear Mr. Caton:

MAIL ROOM

**Notice of Proposed Rule Making
FCC 97-296
MM Docket No. 97-182**

In response to your agency's Notice of Proposed Rule Making regarding the Preemption of State and Local Zoning and Land Use Restrictions on the Siting, Placement and Construction of Broadcast Station Transmission Facilities, we have the following comments:

Currently, in the City & County of Honolulu, broadcast towers are permitted in agricultural and preservation districts, and in industrial districts and industrial mixed use districts. A permit is required and certain minimum standards, including special setback requirements, must be met. In coastal areas, a special management area use permit is required as well.

Our concern about the proposed rules is that they are overly broad. Further, the preemption rule is not limited to Digital TV facilities, but would cover all broadcast transmission facilities, and may set a precedent for preemption of cellular telephone facilities as well. This would not be justified. Although many of our broadcasting towers and associated facilities were established many years ago, our processing of cellular antenna facilities has been expeditious and the experience has been generally positive for applicants.

We do not object to preemption of regulations based on radio frequency (RF) emissions, provided that the broadcasting facilities comply with applicable Federal Communications Commission (FCC) policies and requirements with regard to such emissions. We recognize interference issues in our locational requirements, but we would not object to this preemption, if we

Mr. William F. Caton
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can be assured that FCC interference standards adequately address our concerns.

We object to the preemption of state and local land use, building and similar laws (I-8) relating to the siting, placement and construction of broadcast station transmission facilities, and to the preemption of colocation policies and regulations, as discussed below:

1. Because our economic base depends on tourism, we have a special concern about the visual impacts of broadcasting towers on the scenic and natural resource assets of Hawaii. Preemption of state and local siting requirements could result in an unsightly proliferation of these towers in areas of scenic value, particularly along the shoreline, on ridgelines, or in other areas where they will detract from the natural beauty which attracts visitors to Hawaii.

For the same reason, it is not desirable to locate broadcast towers in or adjacent to residential areas. Today, we have several older broadcast towers in low-lying central urban areas. We would like them relocated to where they will not intrude on other urban uses. Therefore, visual and aesthetic concerns must be recognized as valid considerations in the siting of broadcast facilities.

2. Preemption of building regulations should not be permitted unless FCC rules incorporate the most stringent structural standards. Building code requirements address structural safety and must not be compromised, especially in areas subject to tropical storms and other natural phenomena.
3. Our regulations require new broadcast towers to be structurally designed to accommodate the maximum number of additional users wherever it is technically possible. We believe this is an appropriate land use policy and should be encouraged by the FCC. This requirement could be preempted under the proposed rules.
4. Finally, it is not clear on what grounds or under what procedures a determination will be made that local regulations are either reasonable or unreasonable and what will constitute "a clearly defined and expressly stated health or safety objective."

With regard to the proposed action times, we have the following comments:

Mr. William F. Caton

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If the FCC is compelled to instigate deadlines for local permit processing times, such deadlines must differentiate between:

- * New locations versus existing locations;
- * Free standing towers and monopoles versus mountings on existing buildings;
- * Heights of proposed towers and/or antennas that exceed height limits versus those that fall within governing height limits; and
- * Broadcast facilities that need only one permit versus those that need multiple permits.

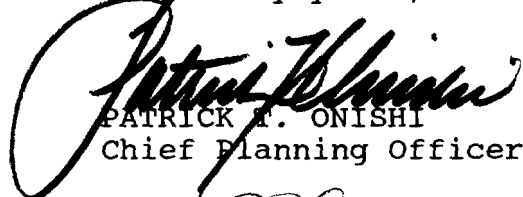
Permit processing time, especially for new broadcast towers, should allow sufficient time for public notification, review and evaluation of visual and other siting impacts prior to action. The action times proposed in the rules may be sufficient in some, but not all, cases.

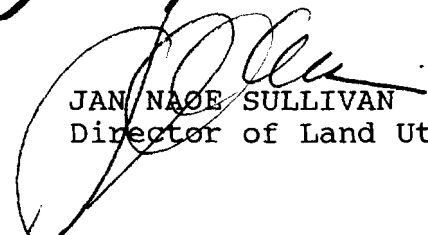
Given your construction schedule deadlines it is ironic that the digital TV industry seeks to meet the schedule by attempting to by-pass local regulations, rather than spend time working with state and local governments to address these needs. We have, to date, heard from only one broadcast company regarding the transition to a digital system.

In conclusion, we are opposed to any preemption proposal until the FCC can show a compelling need for the exemptions. Preemptions should be limited in scope and should recognize the validity of aesthetic, environmental and safety reasons for regulating the siting and placement of broadcast towers.

Thank you for the opportunity to comment. Should you have any questions, please contact Ms. Elizabeth Chinn at (808) 523-4217.

Very truly yours,


PATRICK T. ONISHI
Chief Planning Officer


JAN NAEVE SULLIVAN
Director of Land Utilization